

SENATE BILL 2463
By Finney

AN ACT to amend Tennessee Code Annotated, Title 8,
Chapter 4, to enact the Advocacy for Honest and
Appropriate Government Spending Act.

WHEREAS, the citizens of Tennessee pay taxes, often at sacrifice to themselves and their families, to finance state government; and

WHEREAS, every member of the state government at any level should constantly strive to spend tax money in the most efficient, cost-effective manner possible; and

WHEREAS, dishonestly spending tax monies - whether by fraud, mismanagement, theft, or waste - is an unacceptable violation of the trust citizens place in their government; and

WHEREAS, the citizens of Tennessee have the right to expect strict accountability and stewardship of their tax monies;

NOW, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the intent of the general assembly that the State of Tennessee will vigorously oversee expenditure of tax monies by making an annual report to citizens that ongoing oversight occurs; and all efforts be made to eliminate waste, fraud, mismanagement, and inefficiency in all departments and agencies of state government.

SECTION 2. The title of this act is and may be cited as the "Advocacy for Honest and Appropriate Government Spending Act".

SECTION 3. Tennessee Code Annotated, Title 8, Chapter 4, is amended by adding the following language as new part 5:

§ 8-4-501.

(a) There is hereby created the office of advocacy for honest and appropriate government spending, hereinafter referred to as the "office."

(b) The office shall be under the authority of the comptroller of the treasury.

(c) The office shall be directed by an advocate for honest and appropriate government spending, hereinafter referred to as the "advocate," which shall be appointed by the comptroller of the treasury. The comptroller shall choose an advocate and the office shall be established no later than December 15, 2006.

(d) The advocate shall employ staff as necessary to assist in the duties herein described.

(e) The advocate shall establish lines of communication between the office, and the public and state employees, including:

(1) A website providing information about the office and email contact capabilities;

(2) A postal address; and

(3) A toll-free telephone number.

(f) The office shall be open to receive allegations between 8:00 a.m. and 6:00 p.m., Monday through Friday, except for legal holidays or emergencies requiring closure for staff safety.

(g) The advocate shall prepare information to issue to the public and state employees. Such information shall contain, at a minimum:

(1) The purposes of the office, including the reduction of fraud, mismanagement, waste, and inefficiency in state government, so that state government may become more efficient and serve as better stewards of the taxes entrusted to the state;

(2) A request that any citizen who is aware of fraud, mismanagement, waste or inefficiency in Tennessee government would report the suspected misuse of tax money to the advocate;

(3) Contact information for the office, including a postal address, toll-free telephone number, facsimile number, and email address; and

(4) An assurance that all allegations will be held in strict confidence to the extent allowed by law.

(h) The advocate shall issue a press release to all known Tennessee newspapers, news magazines, radio stations, television stations, Internet news services, and press services on the Monday immediately preceding April 15, beginning in 2007 and each successive year, and the Monday immediately preceding September 22, beginning in 2007 and each successive year. The press release shall contain the information contained in subdivision (g).

(i) The advocate shall prepare the following for state employees:

(1) A document containing all the information required in subdivision (g) which shall be distributed with each employee's first paycheck in January, beginning in 2007 and each successive year; and

(2) Posters containing all the information required in subdivision (g) which shall be posted at all state workplace sites.

(j) The advocate and staff shall also have the following duties:

(1) Receive reports from the public or state employees about possible fraud, mismanagement, waste, or inefficiency;

(2) Establish a system for initial screening of allegations to determine whether there is a reasonable validity or lack of validity for each allegation;

(3) Explain a bonus program, if applicable, with each person making an allegation;

(4) Explain to each person making an allegation the possibility that subsequent legal action may require testimony from such person;

(5) Refer allegations that have a reasonable validity to the proper person or agency for further review; and

(6) Tabulate for statistical purposes the number of referrals to each department, agency, office or bureau or other entity.

(k) The first period of receiving, investigating, and referring allegations shall extend from January 1, 2007 through December 31, 2007, and annually thereafter.

§ 8-4-502.

(a) A monetary bonus program may be authorized by the governor or the general assembly, to be paid to any person whose report results in substantial savings for the state, but there is no requirement to establish such a bonus program.

§ 8-4-503.

(a) For each allegation made by a state employee or member of the public, a report shall be prepared, as follows:

(1) Part A of the report shall contain contact information for the person making the allegation, including, if available, the name, mailing address, telephone number, email address, and, if applicable, the state department or agency employing the person. Part A of the report shall be considered work product of the office and shall therefore be kept confidential. Such information shall be protected from discovery in any legal action to the fullest extent of the law, even if the allegation is proven to be false. Such information may be used by the advocate for further investigatory purposes or if a bonus is awarded.

(2) Part B of the report shall contain the allegation as set forth by the state employee or member of the public.

(3) Part C of the report shall summarize Part B; provided that the identification of the person making the allegation shall be removed by the advocate to protect such person's identity.

(4)

(A) Since a report contains non-investigated, unsubstantiated allegations which could prove damaging to an innocent person, all parts of a report are considered confidential information, and no part shall be released to the public or news media unless a bonus is paid to the reporting person;

(B) If a bonus is paid to the reporting person, his or her name shall be released to the news media. However, the advocate shall discuss with the reporting person the possibility that his or her name may be released prior to actual release of the name to news media. The reporting person may decline the bonus, in which case his or her name shall be kept confidential.

(5) Any person making an allegation in good faith pursuant to this part is immune from civil or criminal liability for making such allegation, even if such allegation proves to be false.

(6) The advocate shall forward Part C of each report to the person or office considered by the advocate to be best able to examine the allegation and institute further action, if appropriate, including:

(A) The governor;

(B) A commissioner, on behalf of his or her department;

(C) An agency, office, or bureau head;

(D) The Tennessee bureau of investigation; or

(E) Any other person or entity deemed appropriate by the advocate to investigate or seek legal action.

§8-4-504.

(a) The advocate shall prepare an annual report of the office of advocacy for honest and appropriate government spending, hereinafter referred to as the "annual report", for distribution to each department, agency, office, and bureau in state government on or before February 1, 2008, and annually by February 1 each year thereafter.

(b) The annual report shall summarize all activities of the office for each calendar year, extending from January 1 through December 31. The annual report shall be made available to the news media and shall be distributed to the following persons no later than February 1 each year:

- (1) The governor;
- (2) The speaker of the senate;
- (3) The speaker of the house of representatives;
- (4) The chairman of the senate finance, ways and means committee; and
- (5) The chairman of the house finance, ways and means committee.

(c) The annual report shall contain, as a minimum, the following information:

- (1) Number of allegations received;
- (2) Number of allegations considered by the office to be groundless or to contain complaints about activities not in the jurisdiction of the state of Tennessee;
- (3) Number of allegations referred to others for investigation;

(4) Number of allegations resulting in completed civil actions to recover state funds inappropriately, excessively, or fraudulently appropriated to contractors or vendors, and the amount in dollars recovered;

(5) Number of allegations resulting in pending civil actions to recover state funds inappropriately, excessively, or fraudulently appropriated to contractors or vendors, and the amount in dollars potentially recoverable;

(6) Number of allegations resulting in completed criminal actions for fraud or misuse of state funds;

(7) Number of allegations resulting in pending criminal actions for fraud or misuse of state funds;

(8) Any other information deemed appropriate by the advocate; and

(9) The advocate's signature, attesting to the accuracy and truthfulness of the annual report.

§ 8-4-505.

(a) On or before March 1, 2008, and by March 1 each successive year, each department, agency, office, bureau or other entity of state government shall file a certificate of fiscal honesty and financial stewardship, hereinafter referred to as a "certificate", with the chairmen of the senate finance, ways and means committee and the house finance, ways and means committee, before appropriations for the next fiscal year can be approved by the general assembly to such department, agency, office, bureau or other entity. Each such certificate shall be made available to all members of the general assembly upon filing.

(b) The certificate shall be based on evaluations of allegations from state employees and the public, as received by the advocate.

(c) A separate certificate shall be submitted by every department, agency, office, bureau or other entity of state government which will receive funding by legislative appropriations for the next fiscal year.

(d) The certificate shall read as follows:

CERTIFICATE OF FISCAL HONESTY AND FINANCIAL STEWARDSHIP

We, (name of the governor), (name of commissioner or head), and (name of comptroller), do hereby certify the following to the General Assembly and to the citizens of the State of Tennessee:

The (name of the department, agency, office, or bureau) will seek funding for the fiscal year of (appropriate FY).

The (department, agency, office, or bureau) has conscientiously conducted an ongoing program to encourage its employees to operate in the most efficient, cost-effective, and honest manner possible; to be vigilant for any practice that unnecessarily spends tax revenues; and to report any waste, mismanagement, fraud, or inefficiency to the Office of Advocacy for Honest and Appropriate Government Spending.

All efforts have been made to provide the most efficient and cost-effective operation of the (department, agency, office, or bureau).

All suspected allegations of fraud have been referred to appropriate agencies for civil recovery of funds fraudulently obtained and for assessment of fines and penalties, as appropriate; and for criminal prosecution, as appropriate.

We further certify that the (name of department, agency, office, or bureau) has been operated in a manner ever mindful that the Tennessee government is entrusted by the people to be careful stewards of tax monies, and the (name of department, agency, office, or bureau) has faithfully guarded and used tax monies as its leadership and employees know how.

By our signatures, we certify that the foregoing statements are accurate and true, to the best of our knowledge and belief:

(Signature of governor)

(date)

(Signature of commissioner/agency head)

(date)

(Signature of comptroller)

(date)

(e) The general assembly shall not appropriate any funds in the next fiscal year for a department, agency, office, or bureau of state government which has failed to file a certificate by April 1 of a given year.

SECTION 4. This act shall take effect July 1, 2006, the public welfare requiring it.